Reference number
2301732-2022

EMPLOYMENT TRIBUNALS
London South Employment Tribunal

Claimant: Anastassia Maari

Respondent: J & A Pellings Limited

Judgment
(Costs)

Both costs applications are dismissed. Each party shall bear their own costs in accordance with the general rule that costs are exceptional in employment tribunal proceedings.

BACKGROUND

1. Mrs Anastassia Maari was employed by J & A Pellings Limited as a junior member of the architecture team from 3 December 2018 until her dismissal for gross misconduct on 17 January 2022. On 3 March 2024, I delivered judgment finding that Mrs Maari had been unfairly dismissed. The Respondent's appeal against that decision was refused by the Employment Appeal Tribunal on 12 August 2024 under Rule 3(7) as having "no reasonable grounds", with the EAT noting that my liability decision was "far from perverse".

2. On 28 December 2024, I delivered a remedy judgment awarding Mrs Maari compensation of £9,868.40. During the remedy proceedings, I rejected the Respondent's arguments on contributory fault and Polkey reduction.

3. Both parties had made settlement offers during the course of the proceedings. The Respondent made offers that exceeded the eventual award made to Mrs Maari. Mrs Maari rejected these offers and proceeded to the remedy hearing.

4. Following delivery of the remedy judgment, both parties made applications for costs against the other. These applications were made within the prescribed time limits under Rule 75 of the Employment Tribunal Procedure Rules 2024. Due to administrative oversight within the tribunal system, these applications were not brought to my attention promptly following their receipt, resulting in the delay in their determination.

COSTS APPLICATIONS MADE

5. The Respondent applied for a costs order against Mrs Maari under Rule 74(2)(a) of the Employment Tribunal Procedure Rules 2024, alleging unreasonable conduct in bringing and conducting the proceedings. The Respondent argued that Mrs Maari had acted unreasonably by rejecting settlement offers that exceeded the eventual award and by pursuing weak remedy arguments that ultimately failed.

6. Mrs Maari applied for a costs order against the Respondent under Rules 74(2)(a) and

74(2)(b), claiming that the Respondent had acted unreasonably in defending the claim and that the Respondent's defence had no reasonable prospect of success. Mrs Maari sought costs in the sum of £11,780, subject to detailed assessment. Her application was based on the Respondent's conduct both during the original proceedings and in pursuing what she characterised as a hopeless appeal to the Employment Appeal Tribunal.

ISSUES FOR DETERMINATION

7. The issues for determination in respect of the costs applications were:

- Whether Mrs Maari acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing or conducting the proceedings within the meaning of Rule 74(2)(a).
- Whether the Respondent acted vexatiously, abusively, disruptively or otherwise unreasonably in defending or conducting the proceedings within the meaning of Rule 74(2)(a).
- Whether the Respondent's response had no reasonable prospect of success within the meaning of Rule 74(2)(b).
- If either threshold under Rule 74 was met, whether the Tribunal should exercise its discretion to make a costs order.

MATERIALS BEFORE ME

8. I had before me the costs applications from both parties, together with supporting documentation including correspondence between the parties' representatives regarding settlement offers. I also had the complete case file including my previous liability and remedy judgments, the bundle of documents from the original proceedings, and correspondence relating to the Employment Appeal Tribunal proceedings.

THE LAW

9. Rule 74 empowers the Tribunal to consider making a costs or preparation-time order where: (a) a party (or representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing or conducting the proceedings; (b) any claim, response or reply had no reasonable prospect of success; or (c) a hearing is postponed or adjourned on a party's application made less than 7 days before it begins.

10. Rule 75(1) allows an application up to 28 days after the date the judgment finally determining the proceedings in respect of that party was sent.

11. *Yerrakalva v Barnsley MBC* confirms that costs in the ET are exceptional, not routine; tribunals must look at the whole picture, identifying what conduct was unreasonable and its nature, gravity and effect.

12. *McPherson v BNP Paribas (London Branch)* confirms that rejecting settlement offers is not, of itself, unreasonable; the tribunal must evaluate the nature, gravity and effect of the conduct and avoid hindsight.

13. Recent EAT decisions reaffirm the high threshold and the need for careful reasoning:

14. *Dowding v The Character Group Plc* [2024] EAT 153. Costs appeal allowed; tribunal must show it has applied the two-stage test and assessed the nature, gravity and effect.

15. *Madu v Loughborough College* [2025] EAT 52. Costs order set aside; wrong to assume

a party "must have been advised" their case lacked prospects; avoid hindsight; apply the two-stage test under the 2024 Rules.

FINDINGS OF FACT AND APPLICATION OF LAW

A. Applicable legal tests

16. Under Rule 74 of the Employment Tribunal Procedure Rules 2024 ("the 2024 Rules"), the Tribunal must consider making a costs order where:

    a) a party (or representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing or conducting the proceedings; and/or

    b) any claim, response or reply had no reasonable prospect of success. If a threshold is met, the Tribunal then exercises discretion whether to make an order, having regard to the nature, gravity and effect of the conduct and all the circumstances.

17. See *Yerrakalva v Barnsley MBC* - costs are exceptional, the Tribunal must look at the whole picture and identify what was unreasonable and its effects; and *McPherson v BNP Paribas* - rejecting settlement offers is not of itself unreasonable; avoid hindsight.

18. Recent EAT authority emphasises careful reasoning and the two-stage approach (threshold then discretion): *Dowding v The Character Group Plc* [2024] EAT 153 and *Madu v Loughborough College* [2025] EAT 52. Both caution against eliding outcome with unreasonableness and require explicit analysis of conduct's nature, gravity and effect.

B. Findings of fact

19. *Liability*: In my liability reasons, I found the dismissal substantively unfair because, given Mrs Maari's junior role, minimal autonomy and lack of intent, summary dismissal was outside the band of reasonable responses; a final written warning would have been proportionate.

20. *EAT sift*: On 12 August 2024, the EAT (Deputy High Court Judge Bowers KC) concluded the appeal disclosed no reasonable grounds, noting the conclusion at para 68 (outside the range based on C's junior role) was "far from perverse," and observing I had warned myself against substitution.

21. The EAT's finding that the appeal disclosed 'no reasonable grounds' reflects its view at the appellate sift; it does not mean that the Respondent's original defence before the Tribunal lacked reasonable prospects.

22. *Remedy*: I awarded £9,868.40; remedy issues included mitigation, period of loss, and arguments on Polkey and contributory fault, which I rejected.

23. *Settlement offers and refusals*: The Respondent offered £12,751.71 (23 May 2024) and later £17,751 (1 October 2024); Mrs Maari rejected both and the claim proceeded to remedy, where the award was £9,868.40.

C. Respondent's application against the Claimant

24. I find as a fact that after success on liability, the outstanding issues at remedy included period of loss, mitigation, and Polkey/contributory fault, all genuine matters requiring resolution. That is borne out by the remedy reasons and the parties' positions at remedy.

25. I find that Mrs Maari's rejection of the offers was a litigation judgment made at the time, against the background of her liability success and contested remedy issues. The mere

fact that her eventual award fell below those offers is hindsight; it cannot, without more, establish unreasonable conduct, because the proper test is whether rejection was reasonable at the time considering the circumstances known then. Applying *McPherson*, rejection of an offer is not per se unreasonable; the Tribunal assesses reasonableness by reference to what was known at the time and the nature, gravity and effect of the conduct. On the facts here, I find her refusals were not outside the band of reasonable litigation conduct.

26. I also find the Respondent's allegation that the Claimant advanced "inflated schedules" does not, on this record, establish unreasonableness. Pitching quantum and refining schedules is part of normal adversarial preparation. No specific entry has been shown to be knowingly baseless or pursued in bad faith; nor is there evidence that such conduct caused unnecessary costs beyond what was required to resolve live remedy disputes (cf. *Yerrakalva*: identify the unreasonable conduct and its effect).

27. The Rule 74(2)(a) threshold is not met.

28. As no threshold is crossed, it is unnecessary to consider exercise of discretion (quantum, means, or summary/detailed assessment). For completeness, I would in any event have declined to exercise discretion given the above findings and the exceptional nature of costs in the ET.

29. The Respondent's application for costs is, therefore, dismissed.

D. Claimant's application against the Respondent

D1. Threshold: "no reasonable prospect of success" (Rule 74(2)(b))

30. The Respondent's liability defence was not obviously hopeless at inception. The "range of reasonable responses" test is inherently evaluative and fact-sensitive; my liability decision turned on C's junior role, culpability and proportionality, which had to be assessed after hearing evidence. I find those were genuine triable issues. That the EAT later described my conclusion as "far from perverse" addresses the appeal grounds, not whether the ET defence had no prospects from the start.

31. The Rule 74(2)(b) threshold is not met.

D2. Threshold: "unreasonable conduct" (Rule 74(2)(a))

32. At remedy, the Respondent advanced arguments on contributory fault and Polkey which I rejected. I find those positions, while unsuccessful, were arguable issues about period of loss, causation, and mitigation, and were not shown to have been pursued in bad faith or without any evidential basis. The remedy record shows both parties put forward evidence and submissions on these contested issues (including oral evidence from Mr Hardy and cross-examination), which the Tribunal resolved against the Respondent. Those were matters properly raised for adjudication; advancing them, though unsuccessful, remained within the bounds of reasonable litigation conduct.

33. I have also considered the EAT sift. The letter records that the appeal disclosed no reasonable grounds and that my para 68 conclusion was "far from perverse." I find that is a statement about the appeal, not retrospective proof that the Respondent's ET stance (pre-appeal) was unreasonable.

34. Consistent with *Yerrakalva*, *McPherson*, *Dowding* and *Madu*, I avoid hindsight and assess conduct at the time it occurred. On that basis, I find the Respondent's conduct did not cross the Rule 74(2)(a) threshold.

35. The Rule 74(2)(a) threshold is not met.

36. As no threshold is crossed, I do not exercise discretion to award costs. The exceptional nature of the jurisdiction, and the need to identify the unreasonable conduct and its effects, would in any event have made an order inappropriate on these facts.

37. The Claimant's application for costs is, therefore, dismissed.

E. Overall conclusion on costs

38. Standing back and applying the whole-picture approach mandated by *Yerrakalva*, I find this litigation, though hard-fought, fell within the normal range of ET litigation requiring judicial determination of contested factual and evaluative issues. Neither party's conduct was vexatious, abusive, disruptive, or otherwise unreasonable, and neither case was misconceived from the start. Costs remain exceptional.

39. Consistent with *Yerrakalva* and *Madu*, I have not used the fact of eventual outcomes or appeal-stage observations as hindsight to re-characterise earlier conduct as unreasonable; the question is how the parties acted at the time, in the context of a case that required judicial determination.

CONCLUSION

40. I dismiss both costs applications. Neither application satisfies the requirements under Rule 74 of the Employment Tribunal Procedure Rules 2024. There was no vexatious, abusive, disruptive or otherwise unreasonable conduct by either party, and neither claim nor response was misconceived from the start. Both liability and remedy involved genuine factual and legal issues requiring tribunal resolution.

41. This case falls within normal litigation parameters where each party bears their own costs in accordance with the general rule that costs are exceptional in employment tribunal proceedings. The principle that costs orders are exceptional has been maintained, ensuring the fundamental accessibility of the employment tribunal system.

42. This is not a case for departing from the default position that each party bears its own costs.

APPROVED
17th August 2025

Sent to parties on:
4th September 2025

FOR THE TRIBUNAL OFFICE